

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

CENTER CAPITAL CORPORATION,)
)
Plaintiff,)
) Case No. JFM 03 CV 400
v.)
)
STEVEN TIMCHULA, CHARLES)
THOMAS, and the ESTATE OF)
JAMES BLAKE,)
)
Defendants.)

MOTION OF PLAINTIFF TO STRIKE DEFENDANTS' REQUEST FOR JURY TRIAL

NOW COMES Plaintiff, Center Capital Corporation ("Center Capital") by its undersigned attorneys, and for its Motion to Strike Request for Jury Trial filed by Defendants Steven Timchula ("Timchula") and Charles Thomas ("Thomas"), states as follows:

1. Defendants Timchula and Thomas filed a Request for Jury Trial. Defendants have waived this right. Under the commercial loan documents Defendants signed in connection with the extension of the debt which is at issue in this civil litigation, defendants waived their right to have this civil action decided by a jury.

2. The Complaint in the underlying case alleges breach of Master Loan and Security Agreement No. 18099 dated March 17, 1997 and breaches of Loan Schedule No. 4; Loan Schedule No. 5; Loan Schedule No. 6; Loan Schedule No. 7, all as more fully set forth in the Complaint filed in this matter.

3. Master Loan and Security Agreement No. 18099, which is attached as Exhibit A to the Complaint, states in paragraph number eight in capital letters, inter alia:

TO THE EXTENT PERMITTED BY LAW, BORROWER
WAIVES TRIAL BY JURY IN ANY ACTION BY OR AGAINST

LENDER HEREUNDER.

The borrower was Environmental Recycling and Waste Reduction LLC, and the signatory for Environmental Recycling and Waster Reduction LLC was Steven Timchula, the Defendant herein.

4. The personal guaranties signed by Timchula and Thomas for each of Loan Schedule Nos. 4, 5, 6, and 7 are set forth at Exhibits C, I, O, and U to the Complaint. Each of said four guaranties signed by Timchula specifically waives trial by jury, and provide, in part:

The Guarantor hereby *waives . . . trial by jury and the right thereto in any action or proceedings of any kind arising on, out of, under or by reason of this Guaranty.*

Id. at ¶ 4 (emphasis added). This civil action is an action arising “on, out of, under or by reason of” the foregoing guaranties because its seeks to collection payment from Defendants on the basis of their personal guaranties of debt. Defendants have voluntarily waived the right to have this matter decided by a jury, and Plaintiff is entitled to enforce that intentional waiver.

5. Defendants’ contractual waiver of trial by jury is enforceable under the law of the State where each of the foregoing guaranties was made, Connecticut,¹ as well as the laws of this State, where each Defendant resides. *L & R Realty v. Connecticut Nat'l Bank*, 246 Conn. 1, 11, 715 A.2d 748 (1998)(pre-litigation waiver of jury trial right in commercial loan documents are “neither against public policy nor are they unenforceable”); *ST Sys. Corp. v. Maryland Nat'l Bank*, 112 Md.App. 20, 34, 684 A.2d 32 (1996)(in context of commercial loan documents “parties can contractually waive their right to a jury trial”). Moreover, a contractual waiver of the right to trial by jury secured by the Seventh Amendment to the United States Constitution is also enforceable. *Sydnor v. Conseco Fin. Servs. Corp.*, 252 F.3d 302, 306 (4th Cir. 2001)(commercial

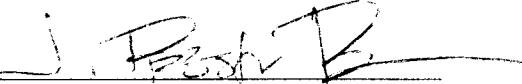
¹ Each of the Guaranties was delivered in the State of Connecticut, and is governed by Connecticut law: “This Guaranty is delivered in the State of Connecticut and shall be governed, construed and interpreted, as to validity, enforcement, and in other respects, by the laws of the State of Connecticut . . .” Complaint, Exhs. C, I, O, and U at p. 2, ¶ 3.

loan document waiver of trial by jury and mandatory non-jury arbitration enforceable). Each and every party claiming a right to trial by jury has waived that right, and this Court should enforce that waiver.

WHEREFORE, Center Capital Corporation prays that the Request for Jury Trial filed by defendants Steven Timchula and Charles Thomas be stricken, that this Motion be granted, and that the trial of this civil action proceed solely before the Court, and without a jury. A proposed order is submitted herewith.

RESPECTFULLY SUBMITTED,

CENTER CAPITAL CORPORATION:

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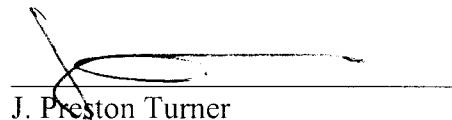
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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2003, that a copy of the foregoing pleading was served via electronic delivery when file with the Court, upon:

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